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Sub Oct 28/79

Affirmed—

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 138. 2-1

ROBERT TILLSON AND MAITLAND BOON, PARTNERS AS ROBERT TILLSON & CO., APPELLANTS,

vs.

THE UNITED STATES.

Ct Jms

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 25, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 138.

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1 United States Court of Claims.

ROBERT TILLSON AND MAITLAND BOON, partners, under the style of Robert Tillson and Company.
vs.
THE UNITED STATES.
No. 10155.

Completed petition.—Filed February 4, 1875.—*J. R.*

To the honorable Court of Claims:

The petition of Robert Tillson and Maitland Boon, partners, under the style of Robert Tillson and Company, residents of Quincy, in the State of Illinois, presented to the court under and by virtue of an act of Congress entitled "An act for the relief of Robert Tillson and Company, of Quincy, Illinois," approved June 23, 1874.

I.

On or about the 16th day of September, 1862, the petitioners, under the copartnership style of Robert Tillson and Company, and the United States, by Brigadier General James W. Ripley, Chief of Ordnance, entered into a contract in the words and figures following, viz:

This contract, made and entered into this sixteenth day of September, one thousand eight hundred and sixty-two, between Robert Tillson & Co., of Quincy, in the State of Illinois, as principal, and John Whitbread, of Quincy, in the State of Illinois, and Matthew B. Finley, of Quincy, in the State of Illinois, as sureties, of first *the* part, and the United States, by Brig. Gen. Ja's W. Ripley, Chief of Ordnance, acting under direction of the Secretary of War, for and in their behalf, of the second part, witnesseth, that the parties of the first part do here-
2 by contract and engage with the said United States to furnish at the United States arsenal, S't Louis, Missouri, three thousand sets of horse equipments complete, to correspond in every particular of quality of materials, workmanship, and pattern with the sample set at said arsenal, with the exception of the following articles, viz, horse-brush, currycomb, lariat, picket pin, link, and blanket, which articles are not to be furnished by the parties of the first part. The said equipments to be subject to inspection at the arsenal where delivered, and none to be received or paid for but such as pass inspection, and are approved by the United States inspector. These horse equipments are to be delivered as follows: Five hundred sets within one week after the date of this contract, and not less than five hundred sets weekly thereafter, until the entire three thousand sets are delivered. And the parties of the first part are to have the right to deliver more rapidly than according to the number of sets of equipments before specified, if they can do so. In case of any failure to make deliveries to the extent and within the times before specified, the said parties are to forfeit the right to deliver whatever number may be deficient in the specified number for the work in which the failure occurs. All these horse equipments are to be delivered by the said parties of the first part, and this contract, if transferred to another party, is thereby forfeited. Payments are to be made in such funds as the Treasury Department shall provide for each delivery, on certificates of inspection and receipt by the United States inspectors, at the rate of twenty dollars and thirty-five cents for

each set complete, with the exceptions above recited. All these horse equipments are to be packed by the parties of the first part in good and sufficient boxes, of an approved pattern, with as many in each box as the inspector shall direct, and for which a fair price, to be determined by the inspector, will be allowed.

And the said parties of the first part do further engage and contract that no member of Congress, officer of the Army, or any agent of the military service shall be admitted to any share or part of this contract or agreement or to any benefit to arise therefrom. And it is hereby expressly provided, and this contract is upon the express condition that if any such member of Congress, officer of the Army, or other person above named shall be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the parties of the first part shall in any respect fail to perform this contract on their part,
3 the same may be, at the option of the United States, declared null and void, without affecting their right to recover for defaults which may have occurred.

It is further stipulated and agreed that if any default shall be made by the parties of the first part in delivering all or any of the articles mentioned in this contract, of the quality and at the times and place therein provided, that then, in that case, the said parties will forfeit and pay to the United States a sum of money not exceeding three thousand dollars.

And the said United States do hereby contract and engage with the said parties of the first part as follows: That for the articles herein contracted for, which shall be delivered, inspected, and approved as aforesaid, there shall be paid to the said Robert Tillson & Co., or to their attorney, on bills in triplicate, made in approved form and duly authenticated by the proper officers of the Ordnance Department the sum of twenty dollars and thirty-five cents for each set of horse equipments complete, and for each packing-box a fair price to be determined, as above stated.

ROBERT TILLSON & CO., [L. S.]
JA'S W. RIPLEY, [L. S.]
Brig. Gen'l, Chief Ordn.,
Principals.
JOHN WHITBREAD, [L. S.]
M. B. FINLAY, [L. S.]
Sureties.

STATE OF ILLINOIS,
County of Adams, ss :

John Whitbread, being duly sworn, deposes and says that he resides in the county of Adams, in the State of Illinois; that he is a merchant, and that the value of his property, over and above all debts and liabilities incurred by him, is over three thousand dollars.

JOHN WHITBREAD.

Sworn and subscribed this 16th day of September, before me.
[SEAL.] ASA W. BLAKESLEY, *J. P.*

STATE OF ILLINOIS,
County of Adams, ss :

M. B. Finlay, being duly sworn, deposes and says that he resides in the county of Adams, in the State of Illinois; that he is a merchant,

and that the value of his property, over and above all debts and liabilities incurred by him, is over three thousand dollars.

M. B. FINLAY.

4 Sworn and subscribed this 16th of September, before me.

[SEAL.] ASA W. BLAKESLEY, *J. P.*

I certify that I have made due and diligent personal inquiry as to the abili-y of the sureties in this contract, and am satisfied that they are good and sufficient for the sum of three thousand dollars each.

ASA W. BLAKESLEY, *J. P.*

STATE OF ILLINOIS,
Adams County, ss:

I, Alexander Johnson, clerk of the county court within and for said county, do hereby certify, that Asa W. Blakesley, esq., whose name appears subscribed to the foregoing certificate, was, on the day of the date thereof, and now is, an acting justice of the peace in and for said county, duly elected, commissioned, and qualified; and that all his official acts, as such, are entitled to full faith and credit.

I further certify that I am acquainted with the handwriting of said Asa W. Blakesley, and believe the foregoing signature, purporting to be his, to be genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Quincy, this 16.h day of September, A. D. 1862.

[SEAL.] ALEXANDER JOHNSON, *Clerk*,
Per JOEL B. STOWE, *Deputy.*

In compliance with the terms of said contract, which was made upon sufficient previous advertisement for proposals according to law, three thousand sets of horse equipments, with six hundred packing-boxes containing the same, were delivered by the petitioners to the United States, at the said arsenal, S't Louis, Missouri, and, upon inspection by the proper officers of the United States, were duly accepted and receipted for by the United States, at the times and in the quantities following, viz:

1862.	Equipments.		Packing-boxes.		Amount.
Oct. 9	945	$19,230 75	189	$236 25	$19,467 00
" 25	490	9,971 50	98	122 50	10,094 00
Nov. 5	640	13,024 00	128	160 00	13,184 00
" 19	110	2,238 50	22	27 50	2,266 00
" 21	280	5,698 00	56	70 00	5,768 00
" 28	535	10,887 25	107	133 75	11,021 00
Total	3,000		600		$61,800 00

5 The prices of said packing-boxes were fair prices, and were duly determined and certified by the United States inspectors. The United States did not pay for the said horse equipments or packing-boxes, or for any part thereof, when the same were so delivered and received, nor did the United States at any time pay for the same wholly in gold or silver coin, or current funds, but delivered to the petitioners therefor certain certificates of indebtedness and Treasury drafts, as f llows:

1862.		1862.		
Nov. 11.	For invoice of October 9,	Certificate		$14,000 00
		Draft	$5,467 00	
Dec. 23.	For invoice of October 25,	($10,094.)		
	For invoice of Nov. 19,	($2,266.)		
	For invoice of Nov. 21,	($5,678.) Certificate		$14,000 00
		Draft	$4,128 00	
Dec. 11.	For invoice of Nov. 5,	Certificate		$10,000 00
		Draft	$3,184 00	
Dec. 26.	For invoice of Nov. 28,	Certificate		$8,000 00
		Draft	$3,021 00	

The petitioners, in consequence of the said failure of the United States to make payment for said several deliveries at the times when they were respectively made, were compelled to borrow, and did borrow, the amounts so deferred, and they paid interest thereon at ten per centum per annum, as follows, viz:

On	$19,467 00	from	October	9,	1862,	to	November	11,	1862.
"	10,094 00	"	"	25,	"		December	23,	"
"	2,266 00	"	Nov.	19,	"		"	23,	"
"	5,678 00	"	"	21,	"		"	23,	"
"	13,184 00	"	"	5,	"		"	11,	"
"	11,021 00	"	"	28,	"		"	26,	"

Said interest amounted, in the aggregate, to $650.45. which sum the petitioners are entitled to recover from the United States.

The petitioners were also compelled to sell, and did sell, said certificates of indebtedness, amounting in the aggregate to $46,000.00, at a discount of seven and one-half per centum for currency. Said
6 discount amounted to $3,450.00, which sum the petitioners are entitled to recover from the United States.

II.

The petitioners, under the copartnership style of Robert Tillson and Company, and the United States, by James W. Ripley, brigadier general, Chief of Ordnance, entered into a contract in writing, which was duly signed on behalf of the United States by said James W. Ripley, brigadier general, Chief of Ordnance, on the 28th day of January, 1863, and was, on or about February 5, 1863, accepted by the petitioners, and is in the words and figures following, viz:

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, January 28, 1863.

Mess'r's ROB'T TILLSON & Co.,
Quincy, Ill.:

GENTLEMEN: Your letter of 20th inst. has been received. To enable you to use up the surplus materials procured by you for the execution of your recent contract for horse equipments, this department will receive from you such a number of complete sets of equipments as the said materials will make, not exceeding five hundred sets. These equipments are to be made in strict accordance with the regulation pattern, and none will be received that do not pass inspection, and they are to be delivered by you free of charge for transportation. For all such sets of horse equipments as may be received, after due inspection, at S't Louis arsenal, you will be allowed at the rate of twenty dollars and five cents per set, on the usual certificates of inspection and receipt;

it being fully understood that each set of equipments is to consist of the same articles as those furnished under your recent contract, with the exception of the nose bag, which you will not be required to furnish. Major Callender has been furnished with a copy of this order.

Respectfully, your ob't serv't,

JAS. W. RIPLEY,
Brig. Gen., Chief Ordn.

At the time when said contract was entered into, the public exigencies required the immediate delivery of the equipments therein mentioned.

7 In compliance with the terms of said contract, five hundred (500) sets of horse equipments, with one hundred (100) packing-boxes containing the same, were delivered by the petitioner to the United States, at the said arsenal, S't Louis, Missouri, and upon inspection by the proper officers of the United States, were duly accepted and receipted for by the United States, at the times and in the quantities following, viz:

1863.	Equipments.		Packing-boxes.		Amounts.
March 11	115	$2,305 75	23	$28 75	$2,334 50
13	135	2,706 75	27	33 75	2,740 50
26	250	5,012 75	50	62 50	5,075 00
Total	500		100		$10,150 00

The prices of said packing-boxes were fair prices, and were duly determined and certified by the United States inspectors. The United States did not pay for the said horse-equipments or packing-boxes, or for any part thereof, when the same were delivered and received, as aforesaid, nor did the United States, at any time, pay for the same wholly in gold or silver coin, or in current funds, but in lieu of such payment, delivered to the petitioners certificates of indebtedness of the United States and Treasury drafts as follows, viz:

1863.		1863.			
March 31,	For invoice of	March 13,	Draft	$2,740 50	
April 9,		March 11,	Draft	2,334 50	
April 27,		March 26,	Certificate		$3,000 00
			Draft	2,075 00	

The petitioners, in consequence of the said failure of the United States to make payment for said deliveries at times when they were respectively made, were compelled to borrow, and did borrow, the amounts so deferred, and paid interest at ten per centum per annum thereon, as follows, viz:

On $2,740 50, from March 13, 1863, to March 21, 1863.
On 2,334 50, " 11, 1863, to April 9, "
On 5,075 00, " 26, 1853 " 27, "

8 The petitioners are entitled to recover said interest, amounting to $62.66, from the United States.

The petitioners were also compelled to sell, and did sell, said certificate of indebtedness for currency at a discount of seven and one-half per centum. Said discount amounted to $225.00, which sum the petitioners are entitled to recover from the United States.

III.

On or about the 20th day of April, 1863, the petitioners, under the co-partnership style of Robert Tillson and Company, and the United States, by Brigadier-General James W. Ripley, Chief of Ordnance, entered into a written agreement, which is set forth in the two following papers, marked "A" and "B," respectively, viz:

A.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, April 13, 1863.

Mess'rs R. TILLSON & Co.,
Quincy, Illinois:

GENTLEMEN: After considering all the offers made, this department has decided to give you an order for one thousand sets of horse equipments, each set to be complete in every respect, according to the pattern set at S't Louis arsenal, as regards component parts, materials, and workmanship, with the exception of the following articles, which will not be furnished by you, viz, blanket, curry comb, brush, lariat, picket-pin, link or hitching snap, spurs and straps, and nose-bag. The saddle trees are to be of the three prescribed sizes, as follows: No. 1, fifteen per cent.; No. 2, fifty per cent.; and No. 3, thirty-five per cent.; and all of them may differ from the pattern recently sent to S't Louis arsenal, provided that they shall be satisfactory in every respect to the inspecting officer. The bridle bits are to be of the four prescribed varieties, and to be furnished in the same proportion of each as under previous contracts and orders. The equipments are to be boxed by you ready for transportation in such boxes as the inspector may direct, which boxes will be paid for at a fair price, to be de-
9 termined by him. The inspection and delivery to be made at your manufactory, and the delivery to be at the rate of not less than fifteen per cent. of the whole number weekly, the first delivery to commence within ten days after the acceptance of the order. For such sets complete, with the exceptions herein named, as the inspector shall receive after inspection, you will be paid at the rate of twenty-two dollars ($22). Report immediately your acceptance or non-acceptance of this order.

Respectfully, your ob't serv't,

JAS. W. RIPLEY,
Brig. General, Ch'f of Ord.

B.

QUINCY, ILL., *April* 20, 1863.

Gen'l J. W. RIPLEY,
Chief of Ordnance, Washington, D. C.:

DEAR SIR: We accept your order, dated 13th inst., for one thousand sets of horse equipments, at twenty-two dollars p'r set.

Please inform us by telegraph (at our expense) where the inspector can be seen. We wish to see him in relation to the saddle-trees. We are informed that J. O. Bernard, of this city, has an order for 3,000 sets. If M'r Bernard cannot fill the order as soon as desired by you, we can make 2,000 sets and deliver 300 sets per week. We made 3,000 sets for you last fall in the same time that M'r J. O. Bernard made 1,000.

Your ob't servants,

ROBERT TILLSON & CO.

On or about the 5th day of May, 1863, the petitioners, under the co-partnership style of Robert Tillson and Company, and the United States, by Brigadier-General James W. Ripley, Chief of Ordnance, entered into a written agreement, which is set forth in the two following papers, marked "C" and "D," respectively, viz:

C.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, April 29, 1863.

ROB'T TILLSON & CO.,
Quincy, Illinois:

GENTLEMEN: I have to acknowledge your letter of 20th inst., and herewith give you an order for two thousand additional sets of horse equipments, on precisely the same terms and conditions as the order from this office of 13th inst,. for one thousand sets, with the exception that the model trees and irons at the arsenal are to be followed in every respect for these additional two thousand sets. Be pleased to signify at once your acceptance or non-acceptance of this order.

Respectfully, your ob't serv't,

JA'S W. RIPLEY,
Brig Gen'l, Ch'f of Ord.

D.

QUINCY, ILL., *May 5th*, 1863.

Gen'l J. W. RIPLEY,
Chief of Ordnance, Washington, D C.:

DEAR SIR: Your favor of the 29th April, offering us two thousand additional sets of horse equipments, is received. We accept your order, and will endeavor to comply strictly with your requirements.

Your ob't servants,

ROBERT TILLSON & CO.

In compliance with the terms of said two last-mentioned contracts, which were entered into at a time when the immediate delivery of the equipments therein mentioned was required by the exigencies of the public service, 3,000 sets of horse equipments, with 600 packing-boxes containing the same, were delivered by the petitioners to the United States, at the said arsenal, at S't Louis, Missouri, and, upon inspection by the proper officers of the United States, were duly accepted and receipted for by the United States, at the times and in the quantities following, viz:

1863.	Equipments.		Packing boxes.		Amounts.
May 20	100	$2,200 00	20	$28 00	$2,228 00
June 10	200	4,400 00	40	60 00	4,460 00
" 12	200	4,400 00	40	60 00	4,460 00
" 17	200	4,400 00	40	60 00	4,460 00
" 19	100	2,200 00	20	30 00	2,230 00
" 26	200	4,400 00	40	60 00	4,460 00
" 30	200	4,400 00	40	60 00	4,460 00
11 July 3	100	2,200 00	20	32 00	2,232 00
" 8	200	4,400 00	40	64 00	4,464 00
" 14	200	4,400 00	40	64 00	4,464 00
" 18	200	4,400 00	40	64 00	4,464 00
" 20	200	4,400 00	40	64 00	4,464 00
" 21	100	2,200 00	20	32 00	2,232 00
" 22	100	2,200 00	20	32 00	2,232 00
" 24	100	2,200 00	20	32 00	2,232 00
" 28	200	4,400 00	40	64 00	4,464 00
Aug. 1	100	2,200 00	20	32 00	2,232 00
" 3	100	2,200 00	20	32 00	2,232 00
" 5	100	2,200 00	20	32 00	2,232 00
" 11	100	2,200 00	20	32 00	2,232 00

The said prices of said packing-boxes were fair prices, and were duly determined and certified by the United States inspectors. The United States did not pay for the said horse equipments or packing-boxes, or for any part thereof, when the same were delivered and received as aforesaid, but delayed payment in every case, as follows, viz:

Amounts.	When delivered.	When paid.
$2,228 00	May 20, 1863	June 11, 1863.
4,460 00	June 10, "	" 29, "
4,460 00	" 12, "	" 29, "
4,460 00	" 17, "	July 8, "
4,460 00	" 26, "	" 29, "
2,230 00	" 19, "	" " "
4,460 00	" 30, "	" 30, "
2,232 00	July 3, "	" 30, "
4,464 00	" 8, "	" 30, "
4,464 00	" 14, "	Aug. 14, "
4,464 00	" 18, "	" " "
4,464 00	" 20, "	" 28, "
2,232 00	" 21, "	" " "
2,232 00	" 22, "	" " "
2,232 00	" 24, "	" " "
4,464 00	" 28, "	Sept. 2 "
12 2,232 00	Aug. 1, 1863	Sept. 2, 1863.
2,232 00	" 3, "	Oct. 3, "
2,232 00	" 5, "	" " "
2,232 00	" 11, "	" 10, "

The petitioners, in consequence of the said failure of the United States to make payment for said several deliveries at the times when they were respectively made, were compelled to borrow and did borrow the several amounts so deferred, and they paid interest thereon at the rate of ten per centum per annum for the several periods of time which elapsed between the delivery of said lots of equipments respectively and the payments therefor. The aggregate amount of interest so paid

was $598.26, which the petitioners are entitled to recover from the United States.

IV.

On or about the 26th day of June, 1863, the petitioners, under the copartnership style of Robert Tillson & Company, and the United States, by Brigadier-General James W. Ripley, Chief of Ordnance, entered into a written agreement, which is set forth in the two following papers, marked "E" and "F," respectively, viz:

E.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, June 22, 1863.

Mess'rs ROBERT TILLSON & CO.,
Quincy, Illinois:

GENTLEMEN: I have received your letter of 16th instant, and hereby give you an additional order for three thousand sets of horse equipments, on precisely the same terms as to patterns, quality of materials, workmanship, articles to be furnished, and price, as the order of one thousand sets under date of 13th of April last, with this modification: the previous model tree may be followed in all respects, except that the irons must be let in, and the name of the maker must be attached
13 to it, as in the last model. This additional order is given with the distinct understanding that you must increase your deliveries beyond the quantity required by your previous orders, because of the urgent demand for these equipments. Be pleased to signify, by return mail, your acceptance or non-acceptance of this order on the conditions named.

Respectfully, your ob't serv't,

JA'S W. RIPLEY,
Brig. Gen., Ch'f Ordn.

F.

QUINCY, ILL., *June 26th*, '63.

Gen'l JA'S W. RIPLEY,
Chief of Ordnance, Washington, D. C.:

DEAR SIR: We have this day received your order, dated 22d inst., for three thousand more sets horse equipments. We accept the same, and will endeavor to fill it promptly and satisfactorily in all respects.

Your obedient servant,

ROBERT TILLSON & CO.

In compliance with the terms of said agreement, which was made at a time when the exigencies of the public service required the immediate delivery of the equipments therein mentioned, three thousand sets of horse equipments, with six hundred packing-boxes containing the same, were delivered by the petitioners to the United States, at the arsenal, S't Louis, Missouri, and, upon inspection by the proper officers of the United States, were accepted and receipted for by the United States, at the times and in the quantities following, viz:

1863.	Equipments.		Packing-boxes.		Amounts.
Aug. 14	100	$2,200 00	20	$27 00	$2,227 00
" 19	400	8,800 00	80	108 00	8,908 00
" 24	200	4,400 00	40	64 00	4,400 00
" 29	100	2,200 00	20	32 00	2,232 00
Sept. 5	100	2,200 00	20	32 00	2,232 00
" 8	200	4,400 00	40	64 00	4,464 00
" 12	200	4,400 00	40	64 00	4,464 00
" 14	200	4,400 00	40	64 00	4,464 00
14 Sept. 21	100	2,200 00	20	32 00	2,232 00
" 26	200	4,400 00	40	64 00	4,464 00
" 28	200	4,400 00	40	64 00	4,464 00
" 29	200	4,400 00	40	64 00	4,464 00
Oct. 2	200	4,400 00	40	64 00	4,464 00
" 5	300	6,600 00	60	90 00	6,696 00
" 8	300	6,600 00	60	96 00	6,696 00

The aforesaid prices of said packing-boxes were fair prices and were duly determined and certified by the United States inspectors. The United States did not pay for said horse equipments when the same were delivered and received as aforesaid, but delayed payment in every case, as follows, viz:

Amounts.	When delivered.	When paid.
$2,227 00	Aug. 14, 1863	Oct. 8, 1863.
8,908 00	" 19, "	" 8, "
4,464 00	" 24, "	" 8, "
2,232 00	" 29, "	" 10, "
2,232 00	Sept. 5, "	" 15, "
4,464 00	" 8, "	" 10, "
4,464 00	" 12, "	" 15, "
4,454 00	" 14, "	" 15, "
2,232 00	" 21, "	Nov. 12, "
4,464 00	" 26, "	Oct. 17, "
4,464 00	" 28, "	" 17, "
4,464 00	" 29, "	" 17, "
4,464 00	Oct. 2, "	Nov. 3, "
6,696 00	" 5, "	" 3, "
6,696 00	" 8, "	" 3, "

In consequence of the said failure of the United States to make payments for said several deliveries at the times when they were respectively made, the petitioners were compelled to borrow, and did borrow, the several amounts so deferred, and they paid interest thereon at 10 per centum per annum for the several periods of time which elapsed between the delivery of said lots of equipments, respectively, and the payments therefor. The aggregate amount of interest so paid was $635.65, which the petitioners are entitled to recover from the United States.

V.

On or about the 2d day of September, 1863, the petitioners, under the copartnership style of Robert Tillson and Company, and the United States, by Brigadier-General James W. Ripley, Chief of Ordnance, en-

tered into a written agreement, which is set forth in the two following papers, marked "G" and "H," respectively, viz:

G.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, August 24, 1863.

Mess'rs ROBERT TILLSON & Co.,
Quincy, Ill.:

GENTLEMEN: I have to acknowledge the receipt of your letter of the 20th instant, and I now offer you an additional order for six thousand (6,000) sets horse equipments on precisely the same terms as to pattern, quality of materials, workmanship, articles to be furnished, and price as the order for three thousand sets dated June 22, 1863. This additional order is given with the distinct understanding that you must increase your deliveries beyond the quantity required by your previous orders, because of the urgent demand for these equipments. Be pleased to signify by return mail your acceptance or non-acceptance of this order on the conditions named.

Respectfully, your ob't serv't,

JA'S W. RIPLEY,
Brig. General, Chief of Ordnance.

H.

QUINCY, ILL., *Sept.* 2, 1863.

Gen'l J. W. RIPPLY,
Chief of Ordnance, Washington, D C.:

DEAR SIR: Your order, dated 24th August, for six thousand (6,000) sets more horse equipments is received. We accept the same and will endeavor to fill it in accordance with the conditions named.

Your ob't servants,

ROBERT TILLSON & CO.

16 In compliance with the terms of said contract, which was entered into at a time when the immediate delivery of the equipments therein mentioned was required by the exigencies of the public service, 6,000 sets of horse equipments, with 1,200 packing boxes containing the same, were delivered by the petitioners to the United States at the said arsenal at S't Louis, Missouri, and, upon inspection by the proper officers of the United States, were duly accepted and receipted for by the United States at the time and in the quantities following, viz:

1863.	Equipments.		Packing boxes.		Amounts.
Oct. 20	100	$2,200 00	20	$32 00	$2,232 00
" 23	100	2,200 00	20	32 00	2,232 00
" 29	200	4,400 00	40	64 00	4,464 00
Nov. 4	100	2,200 00	20	32 00	2,232 00
" 7	300	6,600 00	60	96 00	6,696 00
" 7	300	6,600 00	60	96 00	6,696 00
" 11	100	2,200 00	20	32 00	2,232 00
" 14	200	4,400 00	40	64 00	4,464 00
" 18	300	6,600 00	60	96 00	6,696 00
" 21	200	4,400 00	40	64 00	4,464 00
" 25	200	4,400 00	40	64 00	4,464 00
" 27	200	4,400 00	40	64 00	4,464 00
" 28	100	2,200 00	20	32 00	2,232 00
Dec. 1	200	4,400 00	40	64 00	4,464 00
" 5	200	4,400 00	40	64 00	4,464 00
" 9	200	4,400 00	64	64 00	4,464 00
" 10	200	4,400 00	40	64 00	4,464 00
" 17	300	6,600 00	60	96 00	6,696 00
" 17	200	4,400 00	40	64 00	4,464 00
" 23	100	2,200 00	20	64 00	2,232 00
1864.					
Jan. 11	500	11,000 00	100	160 00	11,160 00
" 11	500	11,000 00	100	160 00	11,160 00
" 11	500	11,000 00	100	160 00	11,160 00
" 18	300	6,600 00	60	96 00	6,696 00
" 27	400	8,900 00	80	128 00	8,928 00

17 The prices of said packing boxes were fair prices, and were duly determined and certified by the United States inspectors. The United States did not pay for the said horse equipments or packing boxes, or any part thereof, when the same were so delivered and received, but delayed payment in every case, as follows:

Amounts.	When delivered.	When paid.
$2,232 00	Oct. 20, 1863	Dec. 1, 1863.
2,232 00	" 23, "	" 3, "
4,464 00	" 29, "	" 3, "
2,232 00	Nov. 4, "	Jan. 13, 1864.
6,696 00	" 7, "	Dec. 3, 1863.
6,696 00	" 7, "	" 3, "
2,232 00	" 11, "	Feb. 24, 1864.
4,464 00	" 14, "	Jan. 13, "
6,696 00	" 18, "	" 13, "
4,464 00	" 21, "	Dec. 30, 1863.
4,464 00	" 25, "	" 30, "
4,464 00	" 27, "	Feb. 24, 1864.
2,232 00	" 28, "	Jan. 13, "
4,464 00	Dec. 1, "	Feb. 24, "
4,464 00	" 5, "	" 24, "
4,464 00	" 9, "	Dec. 31, 1863.
4,464 00	" 10, "	Jan. 5, 1864.
6,696 00	" 17, "	Feb. 24, "
4,464 00	" 17, "	" 24, "
2,232 00	" 23, "	Jan. 13, "
11,160 00	Jan. 11, 1864	Mar. 11, "
11,160 00	" 11, "	" 11, "
11,160 00	" 11, "	" 11, "
6,696 00	" 18, "	Apr. 18, "
8,928 00	" 27, "	" 19, "

In consequence of the said failure of the United States to make payments for said several deliveries at the times when they were respectively made, the petitioners were compelled to and did borrow the several amounts so deferred, and paid interest thereon at the rate of
18 ten per centum per annum, for the several periods of time which elapsed between the delivery of said lots of equipments, respectively, and the payments therefor, made as aforesaid. The aggregate amount of interest so paid was $2,501.40, which sum the petitioners are entitled to recover from the United States.

Of said payments made on the 11th day of March, 1864, the amount of $16,000 was in certificates of indebtedness, which the petitioners were obliged to and did sell at a discount of 7½ per cent., amounting to $1,200, which the petitioners are entitled to recover from the United States.

VI.

On or about the 12th day of January, 1864, the petitioners, under the copartnership style of Robert Tillson & Company, and the United States, by Brigadier General George C. Ramsay, Chief or Ordnance, entered into a contract, in the words and figures following, viz:

[5-cent int. rev. stamp.]

This contract, made and entered into this twelfth day of January, one thousand eight hundred and sixty-four, between R. Tillson & Co., of Quincy, in the State of Illinois, of the first part, and the United States, by Brig. Gen'l Geo. D. Ramsay, Chief of Ordnance, acting under direction and by authority of the Secretary of War, for and in their behalf, of the second part, witnesseth: That the party of the first part does hereby contract and engage with the said United States to furnish at the United States arsenal, Saint Louis, Mo., ten thousand sets of infantry accoutrements, cal. 58. The belts are to be *are* of grained leather, and all the stock to be of the best oak-tanned. The shoulder belt is to be included in the set. The ten thousand sets are to correspond in every particular of quality, of workmanship, and pattern, with the sample set at said arsenal. The said accoutrements to be subject to inspection at the arsenal when delivered, and none to be received, or paid for but such as pass inspection and are approved by the U. S. inspector. These accoutrements are to be delivered as follows, viz: one thousand sets within fifteen days after the date of this contract, and not
19 less than one thousand sets weekly thereafter, until the entire ten thousand sets are delivered. And the parties of the first part are to have the right to deliver more rapidly than according to the number of sets before specified, if they can do so. In case of any failure to make deliveries to the extent, and within the terms before specified, the said parties are to forfeit the right to deliver whatever number may be deficient in the specified number for the week in which the failure occurs. The name and place of manufacture of the parties of the first part must be stamped on each part of the sets of accoutrements.

This contract is given upon the express condition that the parties of the first part shall manufacture the accoutrements in their own shops, and should any be offered, which are not so manufactured, they will be rejected and the contract forfeited. All these accoutrements are to be delivered by the said party of the first part; and all claims under this contract, if transferred to another party, are to be by such transfer thereby forfeited, saving the rights of the United States. Payments, in

such funds as the Treasury Department may provide, for each delivery are to be made on certificates of inspection and receipt by the United States inspectors, at the rate of three dollars and seventy-nine cents ($3.79) per set, for each set of infantry accoutrements. All these accoutrements are to be packed by the party of the first part in good and sufficient boxes of an approved pattern, with as many in each box as the inspector shall direct, for which a fair price, to be determined by the United States inspector, will be allowed. And the said party of the first part does further engage and contract, that no member of Congress, officer of the Army, or any agent of the military service, or other person forbidden by law so to do, is, or shall be admitted to any share or part of this contract, or agreement, or to any benefit to arise thereupon. And it is hereby expressly provided, and this contract is upon the express condition, that if any such member of Congress, officer of the Army, or other person above named, is or shall be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the party of the first part shall in any respect fail to perform this contract on its part, the same may be, at the option of the United States, declared null and void, without affecting their right to recover for defaults which may have occurred. It is further stipulated and agreed, that, if any default shall be made by the party of the first part in delivering all or any of the articles mentioned in this contract, of the quality, and at the times and place therein provided, that then, in that case, the said party will forfeit and pay to the United States the sum of thirty-eight hundred dollars, as agreed and liquidated damages. And the said United States do hereby contract and engage with the said party of the first part as follows: That for each of the articles herein contracted for, which shall be delivered, inspected, and approved as aforesaid, there shall be paid, in the funds aforesaid, to the said R. Tillson & Co., the covenantors, their heirs, executors, or administrators, on bills in triplicate, made in approved form and duly authenticated by the proper officers of the Ordnance Department, the sum of three dollars and seventy-nine cents ($3.79) for each set of infantry accoutrements.

ROBERT TILLSON. [L. S.]
MAITLAND BOON. [L. S.]

Signed, sealed, and delivered in presence of—
BENJAMIN F. HOAR.
HENRY S. HITCHCOCK.

Approved:

GEO. D. RAMSAY,
Brig. Gen'l, Chief of Ordnance.

Approved: By order of the Secretary of War.

C. A. DANA.
Ass't Secretary of War.

WAR DEPARTMENT, *February* 12, 1864.

[50-cent Int. Rev. stamp.]

Know all men by these presents, that we, Robert Tillson & Maitland Boon, of Quincy, in the State of Illinois, as principal, and Lucius Kingman & Nathan Pinkham, of Quincy, in the State of Illinois, and Clark B. Church, of Quincy, in the State of Illinois, as sureties, are held and firmly bound unto the United States of America in the penal sum of thirty-eight hundred dollars, to be paid to the said United States, or to

their certain attorney, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the eighteenth day of January, A. D. 1864.

21 Whereas the above bounden Robert Tillson & Maitland Boon has entered into the contract with the United States set forth in the foregoing covenant:

Now, therefore, the conditions of this obligation are such, that if the said Robert Tillson & Maitland Boon, his heirs, administrators or assigns, shall well and faithfully fulfill each and every one of the aforesaid covenants this obligation to be null and void, otherwise to be and remain in full force and virtue.

ROBERT TILLSON. [L. S.]
MAITLAND BOON. [L. S.]
LUCIUS KINGMAN. [L. S.]
NATHAN PINKHAM. [L. S.]
CLARK B. CHURCH. [L. S.]

Witness:
BENJAMIN F. HOAR.
HENRY S. HITCHCOCK.

STATE OF ILLINOIS,
County of Adams, ss:

[5-cent Int. Rev. stamp.]

Lucius Kingman, being duly sworn, deposes and says that he resides in the city of Quincy, in the State of Illinois; that he is a ; and that the value of his property, over and above all debts and liabilities incurred by him, is over five thousand dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed.

LUCIUS KINGMAN.

Sworn and subscribed this 18th day of January, 1864, before me.
[L. S.] EBENEZER B. BARKER,
Notary Public.

STATE OF ILLINOIS,
County of Adams, ss:

[5-cent Int. Rev. stamp.]

Nathan Pinkham, being duly sworn, deposes and says that he resides in the city of Quincy, in the State of Illinois; that he is a ; and that the value of his property, over and above all debts and liabilities incurred by him, is over five thousand dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed.

NATHAN PINKHAM.

Sworn and subscribed this 18th day of January, 1874, before me.
[L. S.] EBENEZER B. BARKER,
Notary Public.

22 STATE OF ILLINOIS,
County of Adams, ss:

[5-cent Int. Rev. stamp.]

Clark B. Church, being duly sworn, deposes and says that he resides in the city of Quincy, in the State of Illinois; that he is a ; and

that the value of his property, over and above all debts and liabilities incurred by him, is over five thousand dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed.

CLARK B. CHURCH.

Sworn and subscribed this 18th day of January, 1864, before me.
[L. S.] EBENEZER B. BARKER,
Notary Public.

I certify that I have made due and diligent personal inquiry as to the ability of the sureties in this contract, and am satisfied that they are good and sufficient, and fully responsible for the sum of five thousand dollars each.
[L. S.] EBENEZER B. BARKER,
Judge of the Adams County Court, in the State of Illinois.

[5-cent Int. Rev. stamp.]

I certify that I have made due and diligent personal inquiry as to the ability of the sureties in this contract, and am satisfied that they are good and sufficient, and fully responsible for the sum of five thousand dollars each.
[L. S.] S. H. TREAT,
Judge of the United States District Court for the Southern District of the State of Illinois.

[5-cent Int. Rev. stamp.]

In compliance with the terms of said agreement, which was made upon sufficient previous advertisement for proposals according to law, 10,000 sets of infantry accoutrements, with 260 packing boxes containing the same, were delivered by the petitioners to the United States, at the arsenal at S't Louis, Missouri, and, upon inspection by the proper officers of the United States, were accepted and receipted for by the United States, at the times and in the quantities following, viz:

23

1864.	Accoutrements.		Packing boxes.		Amounts.
Feb. 12	1,000	$3,790 00	26	$35 10	$3,825 10
" 17	1,000	3,790 00	26	35 10	3,825 10
" 25	1,000	3,790 00	26	35 10	3,825 10
Mar. 1	1,000	3,790 00	26	35 10	3,825 10
" 7	1,000	3,790 00	26	35 10	3,825 10
" 12	1,000	3,790 00	26	35 10	3,825 10
" 16	1,000	3,790 00	26	35 10	3,825 10
" 22	1,000	3,790 00	26	35 10	3,855 10
" 26	1,000	3,790 00	26	35 10	3,825 10
" 26	1,000	3,790 00	26	35 10	3,825 10

The prices of said packing boxes, above stated, were fair prices, and were duly determined and certified by the United States inspectors. The United States did not pay for said equipments when the same were delivered and received, as aforesaid, but delayed payment in every case as follows:

Amounts.	When delivered.	When paid.
$3,825 10	Feb. 12, 1864	Mar. 8, 1864.
3,825 10	" 17, "	" 16, "
3,825 10	" 25, "	" 19, "
3,825 10	Mar. 1, "	" 31, "
3,825 10	" 7, "	" 29, "
3,825 10	" 12, "	April 7, "
3,825 10	" 16, "	" 14, "
3,825 10	" 22, "	" 21, "
3,825 10	" 26, "	" 20, "
3,825 10	" 26, "	May 2, "

The petitioners, in consequence of the said failure of the United States to make payments for said several deliveries at the time, when they were respectively made, were compelled to borrow, and did borrow, the several amounts so deferred, and paid interest thereon, at ten per centum per annum, for the several periods of time which elapsed between the deliveries of said lots of equipments respectively and
24 the payments thereon as aforesaid. The aggregate amount of interest so paid was $307.66, which the petitioners are entitled to recover from the United States.

VII.

On or about the 17th day of May, 1864, the petitioners, under the copartnership style of Robert Tillson & Company, and the United States, by Brigadier-General George D. Ramsay, Chief of Ordnance, entered into a contract in the words and figures following, viz:

[5-cent int. rev. stamp.]

This contract, made and entered into this seventeenth day of May, one thousand eight hundred and sixty-four, between Robert Tillson & Co., of Quincy, in the State of Illinois, of the first part, and the United States, by Brig.-Gen. Geo. D. Ramsey, Chief of Ordnance, acting under direction and by authority of the Secretary of War, for and in their behalf, of the second part, witnesseth: That the parties of the first part do hereby contract and engage with the said United States to furnish, at the United States arsenal, S't Louis. Missouri, ten thousand sets of infantry accoutrements, cal. 58. The belts are to be of grained leather, and all the stock to be pure oak-tanned. The shoulder-belt is to be included in the set. These accoutrements are to be made in strict conformity with the new pattern sets referred to in the advertisement from the ordnance office, dated March 25, 1864, and which are now deposited at said arsenal. They are to be subject to inspection in all stages of their manufacture, and especially, if so desired, the stock shall be examined before cutting. They are to be subject to final inspection at the said arsenal before being received by the United States, and none are to be received or paid for except such as pass the inspection of and are approved by the United States inspector. The name and place of residence of the manufacturers must be indelibly stamped on each of the leather articles composing the set before they are offered for inspection, and none are to be received which are not so marked; and none of the sets of accoutrements are to be considered as delivered until after they shall have passed inspection in the manner prescribed. These ac-
25 coutrements are to be delivered at the said arsenal free of charge

for hauling or transportation, as follows, viz: Not less than six hundred and sixty-six sets on or before the twenty-eighth day of May, 1864, and not less than six hundred and sixty-six sets per week thereafter until the entire number of ten thousand sets are delivered. And the parties of the first part are to have the right to deliver more rapidly than before stated if they can do so. But in case of any failure to make deliveries to the extent and within the times before stated, then the said parties are to forfeit the right to deliver whatever number of sets may be deficient in the specified number for the week in which the failure occurs.

This contract is given upon the express condition that the parties of the first part shall fabricate all the parts composed of leather in their own shops; and if any are offered for inspection which are not so fabricated, they will be rejected, and this contract will thereby become null and void. All these sets of infantry accoutrements are to be delivered by the said parties of the first part; and all claims under this contract, if transferred to another party, are to be by such transfer forfeited, saving the rights of the United States. Payments, in such funds as the Treasury Department may provide, for each delivery, are to be made on certificates of inspection and receipt by the United States inspectors, at the rate of five dollars and fifty cents ($5.50) per set. All these sets of infantry accoutrements are to be packed by the parties of the first part in good and sufficient boxes, of an approved pattern, with as many in each box as the inspector shall direct, for which a fair price, to be determined by the United States inspector, will be allowed. And the said parties of the first part do further engage and contract that no member of Congress, officer of the Army, or any agent of the military service, or other person forbidden by law so to do, is or shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom. And it is hereby expressly provided, and this contract is upon the express condition, that if any such member of Congress, officer of the Army, or other person above named, is or shall be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the parties of the first part shall, in any respect, fail to perform this contract on their part, the same may be, at the option of the United States, declared null and void, without affecting their right to recover for defaults which may have occurred. It is fur-
26 ther stipulated and agreed that if any default shall be made by the parties of the first part in delivering all or any of the articles mentioned in this contract, of the quality and at the times and place therein provided, that then, in that case, the said parties will forfeit and pay to the United States the sum of five thousand five hundred dollars, as agreed and liquidated damages. And the said United States do hereby contract and engage with the said parties of the first part as follows: That for each of the articles herein contracted for which shall be delivered, inspected, and approved as aforesaid, there shall be paid, in the funds aforesaid, to the said Robert Tillson & Co., the covenantors, their heirs, executors, or administrators, on bills in triplicate, made in approved form, and duly authenticated by the proper officers of the Ordnance Department, the sum of five dollars and fifty cents ($5.50) per set.

ROBERT TILLSON. [L. S.]
MAITLAND BOON. [L. S.]

Signed, sealed, and delivered in presence of—
HENRY S. HITCHCOCK.
BENJ. F. HOAR.

In whose presence said Robert Tillson and Maitland Boon signed the foregoing.

GEO. D. RAMSAY,
Brig. General, Chief of Ordnance.

Approved: By order of the Secretary of War.

JAS. A. HARDIE,
Col., Inspect. General.

WAR DEPARTMENT, *May* 24, 1864.

[Rev. stamp, 50 cents.]

Know all men by these presents that we, Robert Tillson and Mait land Boon, of Quincy, Adams County, in the State of Illinois, as principals, and Lucius Kingman, Nathan Pinkham, and Clark B. Church, of Quincy, Adams County, in the State of Illinois, as sureties, are held and firmly bound unto the United States of America in the penal sum of five thousand five hundred dollars, to be paid to the said United States, or to their certain attorney; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the seventeenth day of May, 1864.

Whereas the above bounden Robert Tillson and Maitland Boon
27 entered into the contract with the United States set forth in the foregoing covenant: Now, therefore, the conditions of this obligation are such that if the said Robert Tillson and Maitland Boon, their heirs, executors, or administrators, shall well and faithfully fulfill each and every one of the aforesaid covenants, this obligation to be null and void; otherwise to be and remain in full force and virtue.

ROBERT TILLSON. [L. S.]
MAITLAND BOON. [L. S.]
LUCIUS KINGMAN. [L. S.]
CLARK B. CHURCH. [L. S.]
N. PINKHAM. [L. S.]

CITY OF QUINCY,
State of Illinois, County of Adams, ss:

[5-cent rev. stamp.]

Lucius Kingman, being duly sworn, deposes and says that he resides in the city of Quincy, county of Adams, in the State of Illinois; that he is a lawyer, and that the value of his property, over and above all debts and liabilities incurred by him, is over five thousand five hundred dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed.

LUCIUS KINGMAN.

Sworn and subscribed this seventeenth day of May, 1864, before me.
[L. S.] JOHN H. WILLIAMS,
Notary Public.

CITY OF QUINCY,
State of Illinois, County of Adams, ss:

[5-cent int. rev. stamp.]

Clark B. Church, being duly sworn, deposes and says that he resides in the city of Quincy, county of Adams, in the State of Illinois; that he is a merchant, and that the value of his property, over and above all debts and liabilities incurred by him, is over five thousand five hun-

dred dollars, and that he is fully responsible for the amount of his ob ligation in the foregoing bond by him executed.

CLARK B. CHURCH.

Sworn and subscribed this seventeenth day of May, 1864, before me.
[L. S.] JOHN H. WILLIAMS,
Notary Public.

28 CITY OF QUINCY,
State of Illinois, County of Adams, ss:

[5-cent int. rev. stamp.]

Nathan Pinkham, being duly sworn, deposes and says that he resides in the city of Quincy, county of Adams, in the State of Illinois; that he is a liveryman, and that the value of his property, over and above all debts and liabilities incurred by him, is over five thousand five hundred dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed.

N. PINKHAM.

Sworn and subscribed this seventeenth day of May, 1864, before me.
JOHN H. WILLIAMS,
Notary Public.

STATE OF ILLINOIS,
Southern District of Illinois, ss:

[5-cent int. rev. stamp.]

I certify that I have made due and diligent personal inquiry as to the ability of the sureties in this contract, and am satisfied that they are good and sufficient, and fully responsible for the sum of five thousand five hundred dollars each.

S. H. TREAT,
Judge of the District Court of the United States,
Southern District of Illinois.

MAY 18, 1864.

STATE OF ILLINOIS,
Adams County, City of Quincy, ss:

We, Robert Tillson and Maitland Boon, of Quincy, in the county of Adams and State of Illinois, do solemnly swear that we have never voluntarily borne arms against the United States since we have been citizens thereof; that we have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that we have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; that we have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto.

29 And we do further swear that, to the best of our knowledge and ability, we will support and defend the Constitution of the United States against all enemies, foreign and domestic; that we will bear true faith and allegiance to the same; that we take this obligation freely, without any mental reservation or purpose of evasion: So help us God.

ROBERT TILLSON.
MAITLAND BOON.

Sworn and subscribed to before me this seventeenth day of May, 1864.
[L. S.] JOHN H. WILLIAMS,
Notary Public.

In compliance with the terms of said contract, which was entered into upon sufficient previous advertisement for proposals according to law, 10,000 sets of infantry accoutrements, with 200 packing-boxes containing the same, were delivered by the petitioner to the United States at the arsenal at S't Louis, Missouri, and, upon inspection by the proper officer of the United States, were accepted and receipted for by the United States, at the times and in the quantities following, viz:

1864				
June 29.	700 sets	$3,850 00		
	14 boxes	21 00		
			$3,871 00	
	Deductions		221 68	
				$3,649 32
July 9.	300 sets	1,650 00		
	6 boxes	9 00		
			1,659 00	
	Deductions		93 00	
				1,566 00
13.	500 sets	2,750 00		
	10 boxes	15 00		
			2,765 00	2,765 00
	350 sets	1,925 00		
	7 boxes	10 50		
			1,935 00	1,935 00
20.	500 sets	2,750 00		
	10 boxes	15 00		
			2,765 00	2,765 00
	450 sets	2,475 00		
	9 boxes	13 50		
			2,488 50	2,488 50
27.	450 sets	2,475 00		
	9 boxes	13 50		
			2,488 50	2,488 50
30 Aug. 1.	450 sets	2,475 00		
	9 boxes	13 50		
			2,488 50	2,488 50
5.	400 sets	2,200 00		
	8 boxes	12 00		
			2,212 00	2,212 00
10.	500 sets	2,750 00		
	10 boxes	15 00		
			2,765 00	
	Deductions		45 00	
				2,720 00
23.	500 sets	2,750 00		
	10 boxes	15 00		
			2,765 00	
	Deductions		50 00	
				2,715 00

	24. 500 sets	2,750 00		
	10 boxes	15 00		
			2,765 00	
	Deductions		50 00	
				2,715 00
	29. 700 sets	3,850 00		
	14 boxes	21 00		
			3,871 00	
	Deductions		35 00	
				3,836 00
Sept.	7. 500 sets	2,750 00		
	10 boxes	15 00		
			2,765 00	
	Deductions		35 00	
				2,730 00
	14. 500 sets	2,750 00		
	10 boxes	15 00		
			2,765 00	
	Deductions		25 00	
				2,740 00
	15. 350 sets	1,925 00		
	7 boxes	10 50		
			1,935 50	
	Deductions		24 50	
				1,911 00
	26. 450 sets	2,475 00		
	9 boxes	13 50		
			2,488 50	
	Deductions		22 50	
				2,466 00
	30. 600 sets	3,300 00		
	12 boxes	18 00		
			3,318 00	3,318 00
Oct.	11. 500 sets	3,750 00		
	10 boxes	15 00		
			2,765 00	2,765 00
	18. 500 sets	2,750 00		
	10 boxes	15 00		
			2,765 00	2,760 00
	24. 300 sets	1,650 00		
	6 boxes	9 00		
			1,659 00	
	Deductions		5 26	
				1,653 74

31 The prices of said packing boxes above stated were fair prices, and were duly determined and certified by the United States inspectors. The United States did not pay for said equipments when the same were delivered and received as aforesaid, but delayed payment in every case, as follows:

Amounts.	When delivered.	When paid.
$3,649 32	June 29, 1864	Aug. 3, 1864.
1,566 00	July 9, "	" 18, "
2,765 00	" 13, "	" 16, "
1,935 00	" 13, "	" 16, "
2,765 00	" 20, "	" 16, "
2,488 50	" 20, "	" 24, "
2,488 50	" 27, "	" 24, "
2,488 50	Aug. 1, "	Oct. 6, "
2,212 00	" 5, "	" 6, "
2,720 00	" 10, "	" 6, "
2,715 00	" 23, "	Sept. 30, "
2,715 00	" 24, "	Dec. 19, "
3,836 00	" 29, "	Nov. 5, "
2,730 00	Sept. 7, "	Dec. 19, "
2,740 00	" 14, "	" 19, "
1,911 00	" 15, "	Nov. 5, "
2,466 00	" 27, "	Dec. 19, "
3,318 00	" 30, "	" 19, "
2,765 00	Oct. 11, "	" 19, "
2,765 00	" 17, "	" 16, "
1,653 74	" 24, "	" 17, "

The petitioners, in consequence of the said failure of the United States to make payments for said several deliveries, at the times when they were respectively made, were compelled to borrow, and did borrow, the several amounts so deferred, and paid interest thereon, at the rate of 10 per centum per annum, for the several periods of time which elapsed between the delivery of said lots of accoutrements respectively and the payments thereof, made as aforesaid. The aggregate amount of
32 interest paid was $906.47, which the petitioners are entitled to recover from the United States.

Of said payments made on the 16th day of August, 1864, the amount of $5,000 was in certificates of indebtedness, which the petitioners were compelled to and did sell for currency at a discount of 7½ per centum, amounting to $375, which the petitioners are entitled to recover from the United States.

And of the amounts due for the two deliveries made August 1 and August 5, 1864, a part was embraced in a certificate of indebtedness for $7,000, dated October 6, 1864, to which reference will be hereinafter made.

VIII.

On or about the 21st day of June, 1864, the petitioners, under the co-partnership style of Robert Tillson & Company, and the United States, by Brigadier-General George D. Ramsay, Chief of Ordnance, entered into a contract in the words and figures following, viz:

[5 cent int. rev. stamp.]

This contract, made and entered into this twenty-first day of June, one thousand eight hundred and sixty-four, between R. Tillson & Co., of Quincy, in the State of Illinois, of the first part, and the United States, by Brig. Gen. Geo. D. Ramsay, Chief of Ordnance, acting under direction and by authority of the Secretary of War, for and in their behalf, of the second part, witnesseth: That the parties of the first part do hereby contract and engage with the said United States to furnish at

the United States arsenal, S't Louis, Missouri, two thousand sets of horse equipments, as follows, viz: These sets of horse equipments are to be furnished complete, with the exception horse brushes, curry combs, lariats, picket pins, links, nose bags, spurs and straps, watering bridles, sweat leathers, and blankets. The curb bits, the malleable iron hardware, and the stirrups are to conform strictly in pattern and finish to those in the pattern sets referred to in the advertisement from the Ordnance Office dated May 4, 1864, and which are now deposited at said arsenal. The trees are to be of the regulation pattern, of assorted
33 sizes, as prescribed by the regulations of the army, to be, when covered, $3\frac{1}{8}$ inches wide between the bars under the pommel, and $6\frac{3}{4}$ to $7\frac{1}{4}$ inches high under the pommel arc. The side bars are to be made of seasoned hard white wood or beech, the pommels and cantles of seasoned beech or ash, well put together, and fastened to the side bars by wood screws not less than $1\frac{3}{4}$ inches long. All the irons, except the stirrup loop holdfasts are to be $\frac{1}{10}$ of an inch thick, all let into the wood and thoroughly fastened with machine-made rivets or suitable screws. The use of rivets made from cut nails will not be permitted. The trees are to be covered with the best green slaughtered cow hides, and all dried or split hides are to be rejected. None are to be trimmed with skirts or strapped until they have been duly stamped on the seat with the inspector's name and title, and bear the name and place of residence of the manufacturer on a brass plate affixed in the manner prescribed by the circular of March 24, 1863, from the Ordnance Office. The leather is to be pure oak tanned, similar in quality to that in the sample set of equipments deposited at said arsenal, and the workmanship to be equal in every respect to that on the samples.

These equipments are to be subject to inspections in all stages of their manufacture, and if so desired, the stock shall be examined before cutting. The final inspection will be made at the said arsenal, and none are to be received or paid for, except such as pass the inspection of and are approved by the United States inspector. All straps and pieces are to be stamped with the maker's name and place of residence before being offered for inspection, and none will be received which are not so stamped. They are to be delivered at the said arsenal free of charge for handling or transportation, and none are to be considered as delivered until after they shall have passed the final inspection. Deliveries are to be made as follows: Two hundred sets on or before the 25th day of June, 1864, and not less than two hundred sets per week thereafter until the entire number of two thousand sets are delivered. And the parties of the first part are to have the right to deliver more rapidly than above stated, if they can do so; but in case of any failure to make deliveries to the extent and within the times above specified, then the said parties are to forfeit the right to deliver whatever number of sets may be deficient in the specified number for the weeks in which
34 the failure occurs. This contract is given upon the express condition that the parties of the first part shall fabricate all parts composed of leather in their own shops, and if any are offered for inspection which are not so fabricated, they will be rejected, and this contract will thereby become null and void.

All these sets of horse equipments are to be delivered by the said parties of the first part; and all claims under this contract, if transferred to another party, are to be by such transfer forfeited, saving the rights of the United States. Payments, in such funds as the Treasury Department may provide, for each delivery are to be made on certificates of inspection and receipt by the United States inspectors, at the rate of

thirty-one dollars and fifty cents per set for the first one thousand sets, and thirty-one dollars per set for the second one thousand sets delivered.

All these sets of horse equipments are to be packed by the parties of the first part in good and sufficient boxes of an approved pattern, with as many in each box as the inspector shall direct, for which a fair price, to be determined by the United States inspector, will be allowed.

And the said parties of the first part do further engage and contract, that no member of Congress, officer of the Army, or any agent of the military service, or other person forbidden by law so to do, is or shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon.

And it is hereby expressly provided, and this contract is upon the express condition that, if any such member of Congress, officer of the Army, or other person above named is or shall be admitted to any share or part of this contract, or to any benefit to arise under it, or in case the parties *ties* of the first part shall in any respect fail to perform this contract on their part, the same may be, at the option of the United States, declared null and void, without affecting their right to recover for defaults which may have occurred.

It is further stipulated and agreed that, if any default shall be made by the parties of the first part in delivering all or any of the articles mentioned in this contract, of the quality and at the time and place therein provided, that then in that case, the said parties will forfeit and pay to the United States the sum of six thousand three hundred dollars as agreed and liquidated damages.

And the said United States do hereby contract and engage with
35 the said parties of the first part as follows: That for each of the articles herein contracted for, which shall be delivered, inspected, and approved as aforesaid, there shall be paid, in the funds aforesaid, to the said R. Tillson & Co., the covenantors, their heirs, executors, or administrators, on bills in triplicate, made in approved form and duly authenticated by the proper officers of the Ordnance Department, the sum of thirty-one dollars and fifty cents ($31.50) per set for the first one thousand sets and thirty-one dollars ($31) per set for the second one thousand sets.

ROBERT TILLSON. [L. S.]
MAITLAND BOON. [L. S.]
GEO. D. RAMSEY,
Brig. General, Chief of Ordnance.

Signed, sealed, and delivered in presence of—
HENRY S. HITCHCOCK,
BENJAMIN F. HOAR.

Approved: By order of the Secretary of War.
JA'S A. HARDIE,
Colonel and Inspector-General.

WAR DEPARTMENT, *June* 30, 1864.

[50-cent int. rev. stamp.]

Know all men by these presents, that we, Robert Tillson and Maitland Boon, of Quincy, in the State of Illinois, as principals, and Lucius Kingman, N. Pinkham, and Clark B. Church, of Quincy, in the State of Illinois, as sureties, are held and firmly bound unto the United States of America in the penal sum of six thousand and three hundred dollars, to be paid to the said United States, or to their certain attorney; for which

payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated the twenty-first day of June, A. D. 1864.

Whereas the above bounden Robert Tillson and Maitland Boon entered into the contract with the United States set forth in the foregoing covenant: Now, therefore, the conditions of this obligation are such, that if the said Robert Tillson and Maitland Boon, their heirs, executors, or administrators, shall well and faithfully fulfill each and every one
36 of the aforesaid covenants, this obligation to be null and void; otherwise to be and remain in full force and virtue.

ROBERT TILLSON. [L. S.]
MAITLAND BOON. [L. S.]
LUCIUS KINGMAN. [L. S.]
N. PINKHAM. [L. S.]
CLARK B. CHURCH. [L. S.]

STATE OF ILLINOIS,
County of Adams:

[5-cent int. rev. stamp.]

Lucius Kingman, being duly sworn, deposes and says, that he resides in the city of Quincy, in the State of Illinois; that he is a land-agent, and that the value of his property, over and above all debts and liabilities incurred by him, is over six thousand and three hundred dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed.

LUCIUS KINGMAN.

Sworn and subscribed this 21st day of June, 1864, before me.
[L. S.] JOHN H. WILLIAMS,
Notary Public.

STATE OF ILLINOIS,
County of Adams:

[5-cent int. rev. stamp.]

Nathan Pinkham, being duly sworn, deposes and says that he resides in the city of Quincy, in the State of Illinois; that he is a livery man, and that the value of his property, over and above all debts and liabilities incurred by him, is over six thousand three hundred dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed.

N. PINKHAM.

Sworn and subscribed this 21st day of June, 1864, before me.
[L. S.] JOHN H. WILLIAMS,
Notary Public.

STATE OF ILLINOIS,
County of Adams:

[5-cent int. rev. stamp.]

Clark B. Church, being duly sworn, deposes and says that he resides in the city of Quincy, in the State of Illinois; that he is a merchant, and that the value of his property, over and above all debts and
37 liabilities incurred by him, is over six thousand three hundred dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed.

CLARK B. CHURCH.

Sworn and subscribed this 21st day of June, 1864, before me.
[L. S.] JOHN H. WILLIAMS,
Notary Public.

[Stamp int. rev. 5.]

I certify that I have made due and diligent personal inquiry as to the ability of the sureties in this contract, and am satisfied that they are good and sufficient, and fully responsible for the sum of six thousand three hundred dollars each

S. H. TREAT.
Judge of the District Court of the United States,
8th Circuit and Southern District of Illinois.

Oath prescribed by the act of Congress approved July 2, 1862.

[Stamp int. rev. 5.]

STATE OF ILLINOIS,
Adams County, City of Quincy:

We, Robert Tillson and Maitland Boon, of Quincy, in the county of Adams and State of Illinois, do solemnly swear that we have never voluntarily borne arms against the United States since we have been citizens thereof; that we have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that we have neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that we have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto. And we further swear that, to the best of our knowledge and ability, we will support and defend the Constitution of the United States against all enemies, foreign and domestic; that we will bear true faith and allegiance to the same; that we take this obligation freely, without any mental reservation or purpose of evasion. So help us God.

ROBERT TILLSON.
MAITLAND BOON.

Sworn and subscribed to before me this twenty-second day of June, 1864.
[L. S.] JOHN H. WILLIAMS,
Notary Public.

38 In compliance with the terms of said last-mentioned contract, which was made upon sufficient previous advertisement for proposals according to law, 2,000 sets of horse equipments, with 400 packing boxes containing the same, were delivered by the petitioner to the United States at the arsenal at S't Louis, Mo., and, upon inspection by the proper officers of the United States, were accepted and receipted for by the United States at the times and in the quantities following, viz:

1864.			
Aug. 10.	200 sets	$6,300 00	
	40 boxes	80 00	
			$6,380 00
	Deductions		180 40
			$6,199 60

	15. 200 sets	6,300 00		
	40 boxes	80 00		
			6,380 00	
	Deductions		180 00	
				6,200 00
	18. 200 sets	6,300 00		
	40 boxes	80 00		
			6,380 00	
	Deductions		180 00	
				6,200 00
	25. 200 sets	6,300 00		
	40 boxes	40 00		
			6,380 00	
	Deductions		160 00	
				6,220 00
	29. 200 sets	6,300 00		
	40 boxes	80 00		
			6,380 00	
	Deductions		160 00	
				6,220 00
Sept.	6. 100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	
	Deductions		75 00	
				3,065 00
	7. 100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	
	Deductions		75 00	
				3,065 00
	22. 100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	3,140 00
	26. 100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	3,140 00
	29. 100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	3,140 00
	30. 100 sets	3,100 00		
39	1864.			
Sept.	30. 20 boxes	40 00		
			3,140 00	3,140 00
Oct.	10. 100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	3,140 00
	18. 100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	3,140 00
	24. 100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	3,140 00
	100 sets	3,100 00		
	20 boxes	40 00		
			3,140 00	3,140 00

The prices above mentioned for said packing boxes were fair prices, and were duly determined and certified by the United States inspectors. The United States did not pay for the said horse equipments when the same were delivered and received as aforesaid, but delayed payment in every case, as follows, viz:

Amounts.	When delivered.	When paid.
$6,199 60	Aug. 10, 1864	Oct. 6, 1864.
6,200 00	" 15, "	Dec. 15, "
6,200 00	" 18, "	" " "
6,220 00	" 25, "	" 9, "
6,220 00	" 29, "	" 19, "
3,065 00	Sept. 6, "	" " "
3,065 00	" 7, "	Nov. 5, "
3,140 00	" 12, "	Dec. 19, "
3,140 00	" 26, "	" 19, "
3,140 00	" 29, "	" " "
3,140 00	" 30, "	" " "
3,140 00	Oct. 10, "	" " "
3,140 00	" 18, "	" 16, "
3,140 00	" 24, "	" 17, "
3,140 00	" " "	" " "

The petitioners, in consequence of the said failure of the United States to make payments for said several deliveries at the times when they were respectively made, were compelled to borrow, and did borrow, the several amounts so deferred, and paid interest thereon, at the rate of ten per centum per annum, for the several periods of time which elapsed between the delivery of said lots of equipments respectively and the payments therefor made as aforesaid. The amount of interest so paid was $1,535.40, which the petitioners are entitled to recover from the United States.

Of said payments, made on the 6th day of October, 1864, the amount of $6,199.60 was embraced in a certificate of indebtedness of that date, which included, also, parts of the two deliveries of August 1, 1864, and August 5, 1864, hereinbefore mentioned, and amounted to $7,000, which certificate the petitioners were compelled to and did sell for currency at a discount of 7½ per centum, amounting to $525, which the petitioners are entitled to recover from the United States.

IX.

For the execution of their said contract with the United States the petitioners erected large shops at great expense, and contracted for large amounts of material, and they were greatly embarrassed and distressed by the failure of the United States to pay for the ordnance stores by them furnished under said contracts promptly at the times of the delivery thereof; and the petitioners several times during the progress of their work under said contracts came to the city of Washington and represented to Hon. Salmon P. Chase, then Secretary of the Treasury, the embarrassments and distress to which they were subjected as afore-

said, and urged the said Secretary to cause payments to be made to them promptly in accordance with the terms of said contracts, and were by him assured that the delays had resulted from the inability of the Treasury Department to meet promptly the liabilities of the government, and that he expected to be able to pay the petitioners more promptly in the future; and the petitioners were always urgently requested by the said Secretary to continue the manufacture and delivery of
41 stores under said contracts, and did continue such manufacture and delivery, relying upon the assurances and yielding to the urgent requests of said Secretary.

By reason of the failure of the United States to pay the petitioners in accordance with the terms of said contract, the petitioner, Robert Tillson, the senior member of the firm of Robert Tillson & Co., who was possessed of unincumbered real estate, was compelled to mortgage, and did mortgage, his individual property to the amount of fifty thousand dollars, to enable the petitioners to comply with the terms of said contracts in the delivery of the said equipments and accoutrements to the United States; and said Robert Tillson's individual property still is subject to such mortgages to an amount exceeding fifty thousand dollars, which he is unable to pay; and the said firm is wholly unable to pay to said Tillson the amount of his advances in the premises or any part thereof.

The petitioners actually incurred a net loss of more than $50,000 in their execution of said contracts, resulting from the failure of the United States to pay for the stores when delivered and from the substitution of certificates of indebtedness for currency when payments were finally made. But the petitioners always performed said contracts on their part with zeal, energy, industry, and promptness, and in perfect good faith, and all the equipments and accoutrements which they delivered to the United States as aforesaid were subjected to the most rigid inspection, and were found to be of the very best material and workmanship.

By reason of the delay, irregularity, and uncertainty which attended the payments by the United States as aforesaid, the petitioners were so often compelled to make default in their engagements with their material men and workmen that their credit as well as resources became crippled, through no fault or neglect of their own, so that they were unable to take advantage of the market by seasonable purchases of materials for their contracts, or to secure the lowest market rates when their purchases were actually made, but on the contrary
42 were compelled to defer purchases on a constantly rising market at great loss, and also to pay for materials, when they were actually bought, higher prices than they would have been compelled to pay but for such injury to their resources and credit. The said last mentioned losses amounted to 10 per cent. ($49,497.26) on the entire amount of stores delivered by the petitioners to the United States as aforesaid, ($494,972.66). And by reason of the premises the petitioners are equitably entitled to recover from the United States said amount of $49,497.26.

X.

The petitioners, by reason of the failure of the United States to perform the said contracts according to the terms thereof, have been, since the 17th day of November, 1864, and still are, compelled to pay interest on the sum of $50,000, at the rate of 10 per centum per annum, although they have respectfully and earnestly petitioned Congress, at every ses-

sion since said 17th day of November, 1864, to make compensation for said losses. The petitioners are therefore equitably entitled to recover from the United States interest, at the rate of 10 per centum per annum, on $50,000, amounting, on the 1st day of January, 1874, to $50,194.32.

The enactment of the said statute, entitled "An act for the relief of Robert Tillson and Company, of Quincy, Illinios," approved June 23, 1874, is the only action had by Congress on this claim; nor has any action ever been had thereon in either House of Congress, excepting a unanimous report of the Committee on Military Affairs of the House of Representatives of the 41st Congress, allowing the petitioners, as compensation in the premises, the sum of $33,454.48.

The petitioners, Robert Tillson and Maitland Boon, are the owners of said claim, and the only persons interested therein. The petitioner, Maitland Boon, in the year 1870, pledged his interest in said claim to the petitioner Robert Tillson, as security for a liability of said
43 Tillson upon an obligation of said Boon for $10,000, which was paid by said Tillson, who has not yet been reimbursed for such payment, or for any part thereof.

The petitioners are citizens of the United States, residing at Quincy, in the State of Illinois, and have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to the rebellion against said government.

The petitioners demand judgment against the United States by reason of the premises for the sum of one hundred and twelve thousand six hundred and sixty-four and fifty-three one-hundre'ths dollars ($112,-664.53.)

PAINE & GRAFTON,
Attorneys for Petitioners.

STATE OF ILLINOIS,
County of Adams, ss:

Maitland Boon, having been duly sworn, on his said oath deposes and says that he is one of the claimants named in the foregoing petition; that no assignment or transfer of said claim, or of any part thereof, or of any interest therein, has been made, except as in said petition stated; that the petitioners are justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

MAITLAND BOON.

Subscribed and sworn to before me, by the said Maitland Boon, this first day of February, 1875. Witness my hand and notarial seal, at Quincy, in said county.

[L. S.]

W'M MARSH,
Notary Public.

44 In the United States Court of Claims, December term, A. D. 1875.

ROBERT TILLSON ET AL. vs. THE UNITED STATES. } No. 10155.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant on file herein; and, not confessing the same or any part thereof, do hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to said claimant in the sum of one hundred and twelve thousand six hundred and sixty-four dollars and fifty-three cents, the defendants say, they are not indebted to said claimant in said sum of money or any part thereof.

And as to so much of said petition as avers that the said claimant have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against said government, the said defendants deny the truth of said allegation, and call for proof thereof.

JOHN GOFORTH,
Assistant Attorney-General.

45 In the Court of Claims.

ROBERT TILLSON AND MAITLAND BOON, UNDER the firm name and & style of Robert Tillson & Co., } 10155.
vs.
THE UNITED STATES.

At a Court of Claims, held at the Capitol in the city of Washington on the 1st day of June, A. D. 1876, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find for the defendant, and do order, adjudge, and decree that the claimants' petition be dismissed.

46 *Application for appeal.*

United States Court of Claims.

ROBERT TILLSON ET AL. *v.* THE UNITED STATES. } No. 10155.

And now come the claimants, by Paine & Grafton, their attorneys, and make application for an appeal to the Supreme Court of the United States from the judgment herein rendered.

PAINE & GRAFTON,
Claimants' Att'ys.

Allowed:

C. D. DRAKE, *C. J.*

(Indorsed:) United States Court of Claims. No. 10155. Robert Tillson et al. v. The United States. Application for appeal. Filed July 12, 1876. A. H. T. Paine & Grafton, attorneys.

47 Court of Claims.

ROBERT TILLSON ET AL. *vs.* THE UNITED STATES. } No. 10155.

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. The claimants and the defendants entered into the various contracts and agreements set forth in the petition.

II. The claimants, at various times between the 9th October, 1862, and the 24th October, 1864, delivered horse-equipments and infantry-accouterments, under said contracts and agreements, to the defendants' officers at the United States arsenal in Saint Louis, to the amount of $494,972.66.

III. There were one hundred and fifteen distinct deliveries of the above-described goods made by the claimants, extending from the 9th October, 1862, to the 24th October, 1864, and the goods delivered were then, at the respective times of delivery, inspected and approved by the defendants' officers, and bills therefor were duly authenticated by the proper officers of the Ordnance Department, as provided by the contract, and no negligence or delay is attributable to the officers of the Ordnance Department in regard to the inspection of the goods or the issuing of the vouchers. The vouchers so received by the claimants were by them presented to the Ordnance Office in Washington, and were by the Ordnance Office transmitted to the Treasury, to be audited and paid, and no delay in so transmitting them is attributable to the Ordnance Office. After the vouchers reached the Treasury Department, intervals of different length occurred before they were audited and drafts issued in payment thereof. The shortest interval between the receipt of a voucher by the Treasury Department and the issuing of the draft in payment was seven days, and the longest was one hundred and fourteen days; the average was thirty-six days. During the period of the fulfillment of their contracts and agreements, before described, the claimants' business necessities compelled them to borrow money by hypothecating or selling their vouchers, and the rate of discount paid by them generally was 10 per cent. per annum.

IV. A portion of the payments made to the claimants upon the vouchers before described were made, to the extent of 25 per cent. thereof, by certificates of indebtedness issued under the act 1st March, 1862 (12 Stat. L., p. 352). These certificates were sent by mail to the claimants, accompanied by ordinary Treasury drafts for the remaining 75 per cent. of the payments. The claimants neither solicited such certificates nor objected to them. Being below par in the market, the claimants sold them at a discount of 7½ per cent. The total amount of the certificates so issued to them was $77,000, and the discount or loss suffered by the claimants in disposing of them for cash was $5,775.

And upon the foregoing facts the Court of Claims decides as

48 CONCLUSIONS OF LAW.

1. The loss and damage suffered by the claimants from the failure to keep and perform the contracts referred to in the findings aforesaid, as to the time and manner of payment thereof, were too remote to be a subject of recovery in this action within the meaning and intent of the private act for the relief of the claimants, passed June 23, 1874.

2. The claimants, by voluntarily accepting certificates of indebtedness in part payment of their demands, are concluded from saying that such payments were in violation of the terms of their contracts with the government.

3. In contracting with the government the claimants submitted themselves to the regular routine of public business, and are not entitled to recover damages for the delays which occurred in auditing their vouchers in the Treasury Department.

NOTT, J., delivered the opinion of the court:

A majority of the court are of the opinion that the damages resulting to the claimants from their inability to purchase on a rising market in consequence of the government's delay in making payments, are too remote to be the subject of judicial relief within the intent and meaning of the private act passed for the claimants' relief on the 23d June, 1874, and in that conclusion I concur. A majority of the court are also of the opinion that the claimant should not recover the discount paid by them on the certificates of indebtedness which they voluntarily accepted in part payment of their accounts against the government, and in that conclusion I also concur. A majority of the court also are of the opinion that the delays in auditing the claimants' accounts in the Treasury Department did not constitute a breach of the contracts before referred to, and, therefore, that nothing is equitably due to the claimants within the intent and meaning of the private act for the failure of the government to keep and perform the contracts as to the time of payment, inasmuch as in contracting with the government the parties submitted themselves to the regular routine of the public business. In that conclusion I am unable to concur, being of the opinion that the delay was unreasonable and in violation of the terms of the contracts, and that the private act was intended to make the claimants whole in this particular, and that they should recover interest upon the payments thus delayed; but in the absence of our brother, M'r Justice Richardson, it is impossible to render final judgment without my concurrence, and as the claimants' counsel have intimated a desire to take the case to the Supreme Court, I unite with the majority of the court in directing judgment to be entered in favor of the defendants.

49 United States Court of Claims.

ROBERT TILLSON & MAITLAND BOON, PARTNERS under the style of Robert Tillson & Co., v. THE UNITED STATES. } No. 10155.

The claimants respectfully request the court to find specifically the following additional facts herein:

V. The business necessities by which claimants were compelled to borrow money during the period of the fulfilment of their contract, were the natural consequences of the delays and irregularities of payment on the part of the defendants.

(Refused as being a conclusion of law.—C. C. N.)

VI. As the natural consequence of such delays and irregu-
50 larities the claimants were unable to make reasonable purchases of materials, and were compelled to defer their purchases on a rising market, and thereby incurred a loss of $.

(Refused as irrelevant and immaterial.—C. C. N.)

PAINE & GRAFTON,
Claimants' Attorneys.

50½ (Indorsed:) 10155. Court of Claims. Robert Tillson et al. Request for additional findings. Filed March 29, 1876. A. H. Paine & Grafton, att'ys.

51 Court of Claims.

ROBERT TILLSON & Co.
v.
THE UNITED STATES. } 10155.

The Attorney-General, on behalf of the United States, requests the court to find the following additional facts:

To the third finding add the words "per annum." (Allowed.—C. C. N.) And,

2. The legal interest on the amount of payments to claimants under these contracts during the periods which elapsed between the receipt of the several vouchers at the Treasury Department and the issue of drafts and certificates in payment thereof was $2,979.89."

(Refused as immaterial.—C. C. N.)

To the fourth finding add,

3. The remainder of the $494,972.66, to wit, $417,972.66, was paid in drafts. These certificates were paid at or before maturity.

(Allowed.—C. C. N.)

52 4. Prior to the letter of Jan. 28, 1863, three payments, and prior to the contract of Jan. 12, 1864, five payments had been made, partly in drafts and partly in certificates of indebtedness as stated in the fourth finding.

(Refused as immaterial.—C. C. N.)

THOMAS SIMONS,
Assistant Attorney-General.

52½ (Indorsed:) 10155. Tillson & Co. Defendants' request for additional findings. Thomas Simons, Asst. Att'y-Gen. Filed Apr. 13, 1876. A. H.

53 In the Court of Claims.

ROBERT TILLSON ET AL.
vs.
THE UNITED STATES. } No. 10155.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the claimants for the allowance of an appeal, as filed in the clerk's office, and of the order of the Chief Justice allowing the same, of the findings of fact and conclusions of law thereon; also, the proposed findings of the claimant & defendants, respectively, and the rulings of the court on the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 14th day of July, 1876.

[SEAL.] ARCHIBALD HOPKINS,
Ch. Clerk Court of Claims.

(Indorsement on cover:) No. 138. Robert Tillson & Maitland Boon, partners as Robert Tillson & Company, appellants, vs. The United States. Court of Claims. Filed 25th August, 1876.

Supreme Court United States.

OCTOBER TERM, 1879.

No. 21.

ROBERT TILLSON ET ALS., APPELLANTS,

vs.

THE UNITED STATES.

MATT H. CARPENTER,
B. F. GRAFTON,
Of Counsel.

Thomas McGill & Co., Law Printers, 1107 E Street N. W., Washington, D. C.

Supreme Court of the United States.

No. 21.—October Term, 1879.

ROBERT TILLSON ET ALS., APPELLANTS,

vs.

THE UNITED STATES.

This is an appeal from the Court of Claims.

The findings of fact and law by the Court of Claims are as follows:

"FINDINGS OF FACT.

"This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

"I. The claimants and the defendants entered into the various contracts and agreements set forth in the petition.

"II. The claimants, at various times between the 9th October, 1862, and the 24th October, 1864, delivered horse equipments and infantry accoutrements, under said contracts and agreements, to the defendant's officers at the United States arsenal in Saint Louis, to the amount of $494,972.66.

"III. There were one hundred and fifteen distinct deliveries of the above-described goods made by the claimants, extending from the 9th October, 1862, to the 24th October, 1864, and the goods delivered were then, at the respective times of delivery, inspected and approved by the defendant's officers, and bills therefor were duly authenticated by the proper officers of the Ordnance Department as provided by the contract, and no negligence or delay is attributable to the officers of the Ordnance Department in regard to the inspection of the goods or the issuing of the vouchers. The vouchers so received by the

claimants were by them presented to the Ordnance Office in Washington, and were by the Ordnance Office transmitted to the Treasury, to be audited and paid, and no delay in so transmitting them as attributable to the Ordnance Office. After the vouchers reached the Treasury Department, intervals of different length occurred before they were audited and drafts issued in payment thereof. The shortest interval between the receipt of a voucher by the Treasury Department and the issuing of the draft in payment was seven days, and the longest was one hundred and fourteen days; the average was thirty-six days. During the period of the fulfillment of their contracts and agreements, before described, the claimants' business necessities compelled them to borrow money by hypothecating or selling their vouchers, and the rate of discount paid by them generally was ten per cent. per annum.

"IV. A portion of the payments made to the claimants upon the vouchers before described were made, to the extent of twenty-five per cent. thereof, by certificates of indebtedness issued under the act 1st March, 1862. (12 Stat. L., p. 352.) These certificates were sent by mail to the claimants, accompanied by ordinary Treasury drafts for the remaining seventy-five per cent. of the payments. The claimants neither solicited such certificates nor objected to them. Being below par in the market, the claimants sold them at a discount of seven and a half per cent. The total amount of the certificates so issued to them was $77,000, and the discount or loss suffered by the claimants in disposing of them for cash was $5,775.

"And upon the foregoing facts the Court of Claims decides as

"CONCLUSIONS OF LAW.

"1. The loss and damage suffered by the claimants from the failure to keep and perform the contracts referred to in the findings aforesaid, as to the time and manner of payment thereof, were too remote to be a subject of recovery in this action within the meaning and intent of the private act for the relief of the claimants, passed June 23, 1874.

"2. The claimants, by voluntarily accepting certificates of indebtedness in part payment of their demands, are concluded from saying that such payments were in

violation of the terms of their contracts with the government.

"3. In contracting with the government, the claimants submitted themselves to the regular routine of public business, and are not entitled to recover damages for the delays which occurred in auditing their vouchers in the Treasury Department."

And the court rendered judgment dismissing claimants' petition.

ASSIGNMENT OF ERRORS.

1. The court erred in refusing to find the facts prayed for by the plaintiffs.

2. The court erred in dismissing the petition on the facts found.

ARGUMENT.

1. An act for the relief of Robert Tillson & Company, Quincy, Illinois:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the claim of Robert Tillson and Company, of Quincy, Illinois, for loss and damage growing out of the failure of the Government of the United States to keep and perform the contract or contracts, as to time and manner of payment, under which certain horse equipments and infantry accoutrements were manufactured between the months of September, 1862, and July, 1864, by said Tillson and Company, for said government, be and the same is hereby referred to the Court of Claims, and such court is authorized and directed to investigate the same, and to ascertain, determine, and adjudge the amount equitably due said firm, if any, for such loss and damage." Approved June 23, 1874.

2 - At the time this case was tried in the Court of Claims, the following rule was in force:

"*Rule V.*

"In all cases either party, on or before the hearing of the cause, may submit to the court a written request to

find specifically as to any matter of fact which such party may deem material to the judgment in the case; and if the court fails or refuses to find in accordance with such prayer, then such prayer and refusal shall be made a part of the record certified on the appeal to this court."

Under this rule claimants requested the court to find *specifically* the following additional facts:

(1.) The business necessities by which claimants were compelled to borrow money during the period of the fulfillment of their contracts, were the natural consequences of the delays and irregularities of payment on the part of defendant.

(2.) As the natural consequences of such delays and irregularities, the claimants were unable to make reasonable purchases of materials, and were compelled to defer their purchases on a rising market, and thereby incurred a loss of $———.

Record, p. 34.

The first of these requests was refused as being a conclusion of law, and the second as being irrelevant and immaterial.

These questions seem to us to be so necessary to a decision of the case, that we invoke the remedial purpose of the rule, and ask the court to send the case back for these findings.

Mahan's case, 14 Wall., 112 (bottom).

3 - All facts showing "*loss and damage growing out of the failure of the United States to keep and perform the contract or contracts with claimants as to time and manner of payment*," are essential to a decision of this case upon the broad principle of *equity* between man and man.

The special act for claimants' relief is a *confession* on

the part of the United States that the covenants in the several contracts as to time and manner of payment were broken by the United States.

From 1864 to 1870 the claimants had the right to sue for damages resulting from the broken covenants, upon the rules of law. The rules of equity in such cases are identical with the rules of law, so they knew they could not recover the full measure of their losses in such a suit. Hence, they memorialized Congress for relief long before their action was barred. With all the facts before it, Congress passed the law set out for their relief. The manifest intention of Congress was to grant relief for the grievances laid before it, and the rule laid down in the act for the Court of Claims was not "according to the *rules of law* or the *rules of equity*," but the court was to investigate and adjudge the amount "*equitably* due" the claimants for loss and damage *resulting* from the *confessed* broken covenants.

It cannot be that Congress simply intended to remove the bar of limitation, to permit the claimants to sue, in order that their petition might be dismissed. It is a solemn act of legislation, and must mean something better than that.

Every fact, therefore, which establishes loss and damage *resulting* from the broken covenants, becomes essential to the decision of the case. The damage resulting to claimants from their inability to purchase material on a rising market to fill their contracts by reason of the failure of the United States to make prompt payments for goods delivered, is a real element of loss, capable of being measured, and one of the things the Court of Claims was to investigate and adjudicate.

The fact that claimants were compelled to borrow money to fulfill their contracts because the United States delayed payments for goods delivered, is an essential one in the

case, and is no more a conclusion of law than the fact that the Ute Indians killed Major Thornburgh.

The facts found by the court show that the claimants manufactured and delivered to the United States, under the several contracts set forth in the petition, horse equipments and infantry accoutrements to the amount of $494,-972.66; that vouchers were given claimants on the delivery and acceptance of their goods, and that claimants were compelled to borrow money on these vouchers by hypothecating or selling the same, and that the rate of discount paid by them was generally 10 per cent. per annum. (Record, p. 33.)

Here is a loss *resulting* from the confessed broken covenants of the contracts on the part of the United States, amounting to 10 per cent. on the whole volume of their business, or $49,497.26, for which amount the claimants are clearly entitled to judgment under the act.

The Court of Claims also finds that $77,000 was paid in Treasury certificates, and that claimants sold these at a discount of 7½ per cent, and thereby suffered a loss of $5,775. (Record, p. 33.)

Certainly the act for claimants' relief contemplates payment for this item. Congress knew all about claimants' legal predicament, as to this item of loss, when it passed the act for their relief, and all that was required or expected of the Court of Claims was to investigate the same and to ascertain and determine the amount of it.

Under this special law the Court of Claims was required to act in the character of an auditor rather than as a court of law.

Under these findings the claimants are entitled to judgment for $49,497.26 on account of discount paid on the vouchers, and $5,775 on account of discount paid on the Treasury certificates, amounting in the aggregate to $55,272.26.

4. *The claim referred to the court by the act* is a claim for loss and damage resulting from the failure of the government to pay for the stores *at the time* and in the manner stipulated, *and for nothing else.* It is not a claim for any unpaid installment or part of the price stipulated, but is wholly a claim for loss and damage resulting from *delay* in the several payments, and from the *substitution*, in certain cases, of certificates of indebtedness for money as the medium of such payments.

5. The court is authorized and directed by the act to ascertain, determine, and adjudge the amount equitably due for loss and damage resulting from the failure of the government to pay for the stores *at the time and in the manner stipulated*, and it is not directed or authorized to ascertain, determine, or adjudge anything else in this case.

6. Whatever is an element of such loss or damage resulting from the failure of the government to pay for the stores *at the time and in the manner stipulated*, comes within the jurisdiction of the court under the act. And all evidence which tends legitimately to show either the fact or the extent of the loss and damage so occasioned, is competent evidence in this case.

7. Evidence of the amount of interest actually and necessarily paid to third persons by the claimants, in consequence of such delay on the part of the government, is competent evidence tending to show both the fact and the extent of the damage and loss which resulted from the failure of the government to pay for the stores at the time and in the manner stipulated.

8. It is immaterial whether this mode of ascertaining and measuring the loss and damage resulting from the failure of the government to pay for the stores at the time and in the manner stipulated, may or may not be said

to amount to a virtual allowance of interest during the periods of delay. The thing itself being authorized and directed by the statute, it is not material to inquire what name may or may not be given to it.

9. Assuming that the admission of such evidence would result in a virtual allowance of interest, it is no valid objection that the act of March 3, 1863, forbids an allowance of interest by this court. For the Congress by which this special act for the relief of the claimants was passed, was not inferior in legislative power to the Congress by which the act of March 3, 1863, was passed. And the latter Congress had this advantage over the earlier: that it was able to repeal all acts of the earlier Congress. And if the Legislature could in 1863 forbid the allowance of interest generally, by this court, so could the Legislature in 1874 not only authorize and direct the allowance of interest in this particular case, but also direct and allow it in all cases, by wholly repealing the general provision enacted in 1863.

10. An allowance for the loss and damage resulting from the failure of the government to pay for certain stores *in the manner stipulated*, and from the substitution of certificates of indebtedness for lawful money, is authorized and directed by the statute referring this case to the court. Under the general laws of the United States the contracts of January 28, February 5, 1863, and August 24, September 2, 1863, bound the government to pay the claimants in lawful money.

Certainly there can be no pretense that the claim of reimbursement for the loss resulting from the substitution of certificates of indebtednes for lawful money is a claim for interest.

11. The claims under the ninth and tenth heads of the

petition are shown by the proofs cited to be equitable, and are covered by the provisions of the act.

2. AUTHORITIES.

The use of evidence of the amount of interest actually and necessarily paid to third persons, by the claimants, in consequence of the failure of the government to pay for the stores at the time stipulated, as means of ascertaining and measuring the loss and damages, is not opposed by the authorities.

1. The statute for the relief of the claimants directs the court to adjudge the amount equitably due for *damages resulting from delay* in payment for the stores. The Supreme Court has held, for more than seventy years, that the same phraseology employed in the judiciary act of 1789 covers an allowance of interest. The only authority which that court has to adjudge damages or interest against the plaintiff in error, upon affirmance of the judgment of the inferior court, is derived from the 23d section of that act, (1 Stats. at Large, 85,) which authorizes and directs the Supreme Court to "adjudge or decree to the respondent in error just damage for his delay." Under this provision the Supreme Court, in 1803, adopted rules 17 and 18, which provided that when the writ of error should appear to have been sued out merely for delay, damages should be awarded at the rate of ten per centum, and when a real controversy existed, at six per centum, "the interest to be computed as a part of the damages in both cases." (1 Cranch, Rules.) These rules remained in force until the revision of 1858, when rule 23 was adopted. The latter rule is entitled "Interest," and provides that in all cases of affirmance in error interest shall be allowed at the rate at which similar judgments bear interest in the courts of the State where the judgment was rendered, and in all cases where the writ of error shall delay proceedings on the judgment of the infe-

rior court, and shall appear to have been sued out merely for delay, damages at the rate of ten per cent., in addition to interest, shall be allowed.

There is no authority for any of these rules except the provision of the act of 1789, already cited, which authorizes the court to adjudge to the respondent in error *just damages for his delay*. And the Supreme Court held, in Boyce's Executors *v.* Grundy, 9 Peters, 289, that it was error for the inferior court, after an affirmance of its judgment by the Supreme Court, to allow interest thereon from the date of its original rendition to its affirmance, when the Supreme Court had not awarded such interest as damages under the act of 1789 and the rules already cited; that "it was solely for the decision of the Supreme Court whether any damages or interest (as a part thereof) are to be awarded or not in case of affirmance."

The Attorney-General, (7 Opinions, 531,) referring to this action of the Supreme Court, says that "a statute interest on the detention of money is the established rendering of the term damages" in this act, and "if, therefore, any such case of claim on the government can be shown, with color of demand for interest as damages, it will be no departure from the rule never to allow interest except on express requirement of statute."

2. But the admission of evidence of the amount of interest necessarily paid by the claimant to third persons, as one of the means of ascertaining and measuring the loss and damage resulting from the failure of the government to pay for the stores at the time and in the manner stipulated, does not amount to an allowance of interest from the government to the claimants, even for the periods of delay in the several payments. The claimants do not ask payment for the use of their own money, but for the loss which the government occasioned them, by com-

pelling them actually to pay for the use of the money of third persons.

3. The statute directing this court to "ascertain, determine, and adjudge the amount equitably due" to the claimants, contemplates an adjudication of the amount justly and fairly due upon the general principles of equity which are recognized between man and man, without regard to the technical system of rules and principles which has been built up under the name of equity by the action of the courts and the legislature. The words *equitably* and *equitable* are often used in this sense. An instance occurs in 4 Opinions, 137, where the Attorney-General, speaking of the settled practice of the government to pay no interest, says: "There can be no doubt that the well-established *equitable* principle between man and man is the other way." And this use of the words is recognized in 7 Opinions of the Attorney-General, 529, as follows: "It is true, the expression sometimes occurs in judicial opinions, that interest is or is not *equitably* due in such and such cases. By such expressions it is not intended to say that equity would give interest when law does not. That is apparent from the manner in which Mr. Legaré employs the word in one of the passages quoted from him. All that can be intended by it is to speak of what would be just between private individuals, as in giving instructions to a jury on a question of damages. It does not imply equity, as such, any more than law."

Waiver.

It cannot be said that the acceptance of these certificates of indebtedness was a waiver of the claimants' right to payment in lawful money, because the very object of this special statute is, in part, to authorize and direct the court to compensate the claimants for the loss and damage re-

sulting from this failure of the government to make the payments in the manner stipulated, that is to say, in lawful money.

The numerous instances in which Congress has allowed interest are cited in United States *v.* McKee, 1 Otto, 442.

MATT H. CARPENTER,
B. F. GRAFTON,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

TILLSON & BOON, APPELLANTS,
vs.
THE UNITED STATES. } No. 138.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

TILLSON & BOON, APPELLANTS,
vs.
THE UNITED STATES. } No. 138

BRIEF FOR THE UNITED STATES

The private statute upon which this suit is founded is that of June 23, 1874 (18 Stat., 614), and is as follows:

"*Be it enacted*, &c., That the claim of Robert Tillson and Company, of Quincy, Illinois, for loss and damage growing out of the failure of the Government of the United States to keep and perform the contract or contracts as to time and manner of payment under which certain horse equipments and infantry accoutrements were manufactured between the months of September, eighteen hundred and sixty-two, and July, eighteen hundred and sixty-four, by said Tillson and Company for said government, be, and the same is hereby, referred to the Court of Claims, and such court is authorized and directed to investigate the same, and to ascertain, de-

termine, and adjudge the amount equitably due said firm, if any, for such loss and damage."

The main purpose of the above act was to confer a *jurisdiction* which, from lapse of time or otherwise, did not exist. The reference therein to *a failure by the United States to perform the contract in question* is not to be taken as an admission of such failure as a fact, but as a matter asserted by the claimants, or a phrase used to identify the point at issue. The words are to be considered as used by the parties who promoted the bill. The words "if any," toward the close of the act, although referring immediately to *the amount due for damage done*, in effect qualify all that is suggested as to liability by the United States.

However, even though the statute admits a breach of contract, it does not embarrass defences on the part of the government by way of *confession and avoidance*, such as *accord and satisfaction*, *payment*, and the like.

The Court of Claims does not find that the average of delay in passing the vouchers through the Treasury and obtaining money therefor was greater than usual. The time was a time of war, and the business which devolved upon the officers of the Treasury was enormous. Delay occasioned by what was mere friction of machinery is a matter which in such cases contractors with the government, no doubt, take into account when fixing their prices. As the learned court below has well said (Record, folio 48, third conclusion of law): "In contracting with the government the claimants submitted themselves to the regular routine of public business."

It will be observed from the petition that the claimants made, from time to time during twenty months, *eight several contracts* for furnishing the horse equip-

ments, &c., in question. The alleged delinquency of the United States ran along over the whole of this period. (Record, p. 3, bottom, &c.) It seems, then, that such delinquency was an element of no material consequence, or that the contractors in some way protected themselves against it. *It is not usual or reasonable for contractors to go on steadily to enlarge their business with employers who give substantial ground for charging them with inability or unwillingness to perform their engagements.* A petition which sets forth such a course of dealing as a foundation for such a charge is, substantially, *felo de se.* The course of dealing in the present instance goes far to confirm the presumption which arises otherwise (Savage *v.* The United States, 92 U. S., 382), that the payments already made at the Treasury were regarded as in full satisfaction of all that had passed between the parties.

The claimants cannot complain because of loss upon the *certificates of indebtedness.* The statute which authorized these (1862, ch. 35, 12 Stat., 352) allowed them to be issued only to creditors "who may be desirous to receive them." The claimants are chargeable with knowledge of this, and cannot deny that they desired to receive such certificates. It follows as a matter of course that they cannot now complain of such receipt, or make it a cause of recovering damages. The certificates bore interest, and were payable in future. Their fluctuation in the market was a matter for which the United States were not reponsible, neither did they engage to indemnify holders who should sell them when below par.

I do not see that anything is *found* by the Court of Claims in reference to a *rising market*, &c., as alluded to

in the opinion below. What is said about that matter in the petition is put at issue by the answer, and in the absence of a finding thereupon will, as it seems, be treated as nonexistent.

S. F. PHILLIPS,
Solicitor-General.